expressly consented to by such bank and until such bank's charges in respect of the transfer are paid". This argument, in our judgment, is unsustainable. Paragraph (b) by its express terms does not absolve the bank in all circumstances from the obligation to effect a transfer; the bank is obliged to effect a transfer where it has consented to do so. In the instant case, the respondents had issued an irrevocable letter of credit and had designated it as transferable; that being so it must be taken to have consented to a transfer of the letter of credit in accordance with the terms thereof. If it has not so consented, then it should not have designated the letter of credit as transferable. It makes no commercial sense for a bank to have opened an irrevocable letter of credit in favour of a beneficiary and designated it as transferable and thereafter, while the letter of credit remains in force, to say to the beneficiary, when requested to effect the transfer thereof, that it is not obliged to effect the transfer because it has not consented to do so. It is settled law that a bank which opens an irrevocable letter of credit binds itself to make payment to the beneficiary named therein upon the latter tendering the requisite documents in accordance with the terms thereof: see *Urquhart Linday & Company Limited* v. *Eastern Bank, Limited*[1] and the *dictum* of Jenkins L.J. in *Hamzeh Malas & Sons* v. *British Imex Industries Ltd*[2] at p.129, and equally, where such a letter of credit is designated by the bank as transferable, it binds itself to effect a transfer in accordance with the terms thereof, as by the terms of its own letter of credit it has expressly consented to such transfer.

Therefore the respondents by issuing the irrevocable letter of credit designated as transferable must be taken to have consented to a transfer in accordance with the terms thereof. They were under an obligation to effect the transfer as requested by the appellants and should have done so. Accordingly, we allow the appeal, set aside the judgment of the High Court and make an order in terms of a draft order as agreed to between the parties. There will be the usual consequential order for the refund to the appellants or their solicitors of the deposit paid into Court by the appellants as security for costs of the respondents.

Appeal allowed.

Solicitors: *Godwin & Co.; Tan Rajah & Cheah.*

INDO-AUSTRALIAN TRADING CO. PTE. LTD. v. PAKIRI KOTHANDAPANI

[A.C.J. (Rajah J.) May 23, 1985]

[Singapore – D.C. Appeal No. 20 of 1984]

Landlord and Tenant – Rent-controlled premises – New contractual tenancy – Whether determined – Notice to quit served on Chief Justice – Whether valid – Prohibition of subletting – Plaintiffs aware of violation – Control of Rent Act (Cap. 266).

The appellants sued the respondent for possession of certain premises, owned by them from January 5, 1952, on the ground that by virtue of the events that had taken place, the defendant had become a person in wrongful occupation and consequently a trespasser of the premises, which are premises within the Control of Rent Act. One Sudagar had been a tenant of the premises since 1949. By a written agreement dated January 5, 1952, the plaintiffs let to Sudagar the premises on a monthly tenancy at a rent of $30 per month. This contractual tenancy was duly determined on November 30, 1968, so that Sudagar became the statutory tenant of the appellants as from December 1, 1968. On September 24, 1981, the plaintiffs served on the Honourable Chief Justice as legal personal representative of the Estate of Sudagar a notice to quit dated September 24, 1981, and expiring on October 31, 1981. The defendant put the plaintiffs to strict proof of their claim. The District Court gave judgment in favour of the respondent and hence this appeal.

Held, dismissing the appeal: (1) no new contractual tenancy had come into being and Sudagar's tenancy would therefore continue to be on the same basis and terms as had been before the plaintiffs purchased the premises;

(2) the said notice to quit dated October 17, 1968 had not been served on Sudagar and that therefore his contractual tenancy had not been terminated as pleaded;

(3) the plaintiffs had not proved the death of Sudagar and the notice to quit dated September 24, 1981, served on the Chief Justice is of no effect;

(4) the Court would have found against the plaintiffs for they had been aware of violations of prohibition to sublet for a long time before they took action.

Case referred to:

(1) *Balwant Singh* v. *Tong Lam & Co.* [1963] M.L.J. 33.

DISTRICT COURT APPEAL.

L.A.J. Smith for the appellants/plaintiffs.
Karuppan Chettiar for the respondent/defendant.

Cur. Adv. Vult.

Rajah J.: This appeal arises from a judgment in favour of the defendant in an action brought by the plaintiffs, Indo-Australian Trading Co. Pte. Ltd.,

against one Pakiri Kothandapani, the defendant, in District Court Summons No. 402 of 1982 wherein the plaintiffs claimed that they were the owners and were entitled to possession of the premises known as No. 119 Upper East Coast Road, Singapore (formerly known as 472-2 East Coast Road, Singapore) (the said premises) on the grounds that by virtue of the events that had taken place in regard to the tenancy of the said premises the defendant had, prior to the issue of the said Summons, become a person in wrongful occupation of the whole of the said premises and so a trespasser in regard to the said premises. The Statement of Claim contained the statement "the premises are premises within the Control of Rent Act but the plaintiffs are not precluded from recovering possession thereof as the said defendant is not a protected person within the meaning of the Act."

The case for the plaintiffs was:

(i) that by an Agreement in writing dated January 5, 1952 (the said Agreement) and made between the plaintiffs of the one part and one Sudagar Singh (Sudagar) of the other part (page 57 of the Record) the parties entered into a new contractual tenancy whereby the Plaintiffs let to Sudagar the said premises on a monthly tenancy at a rent of $30 per month. (It is not disputed by the parties that the plaintiffs had on or about January 5, 1952 become the owners of the said premises, having purchased same subject to Sudagar's tenancy and that prior to such purchase Sudagar had been the tenant thereof since 1949 (page 29 of Record) and that Sudagar's tenancy prior to the said purchase had not been subject to the restriction of subletting or assigning or transferring or parting with possession). Para. 2 of Statement of Claim;

(ii) that by the said Agreement Sudagar as tenant covenanted not to sublet or assign the tenancy or part with the possession of the said premises or any part thereof. Para 3 of Statement of Claim;

(iii) that by a Notice to Quit dated October 17, 1968 and expiring on November 30, 1968 (page 80 of Record) (the said Notice to Quit) duly served on Sudagar by A.R. Registered Post the plaintiffs duly determined the said new contractual tenancy whereupon Sudagar became the statutory tenant of the plaintiffs so that, even in the event of the said Agreement being ineffective the statutory tenant Sudagar as from December 1, 1968 would no longer have the right to sublet, assign, transfer or part with possession of the said premises. Para. 4 of Statement of Claim;

(iv) that the subletting to the defendant took place either during the said new contractual tenancy or after Sudagar had become a statutory tenant.

In his Defence the defendant denied all knowledge of the allegations in paragraphs 2, 3 and 4 of the Statement of Claim and put the plaintiffs to strict proof of the allegations therein.

The first question that has to be answered is whether the said Agreement is a good and valid Agreement. The finding of the learned District Judge on this was that, as there was no consideration for the said Agreement, the prohibition would not apply and he cited the case of *Balwant Singh* v. *Tong Lam & Co.*[1] On the whole of the evidence in this case I am satisfied that Sudagar was ignorant of the English language and that, therefore, what the learned Chief Justice said at page 34 1st column G of the cited case is relevant to this question:–

"The fact that the form of receipts contained a prohibition does not seem to me to be conclusive having regard to the proprietor's lack of knowledge of the English language ..."

In my view no new contractual tenancy, as contended for by the plaintiffs, had come into being and that therefore Sudagar's tenancy would continue to be on the same basis and terms as had been before the plaintiffs purchased the said premises.

The other question to be decided in my view is whether the said Notice to Quit is an effective one. The defendant has put the plaintiffs to strict proof of the said Notice to Quit. It has therefore to be strictly proved by the plaintiffs. The plaintiffs have therefore to prove that it was served on Sudagar by registered A.R. post as pleaded by them. The plaintiffs led no evidence on this even though they were called upon by the Defence to prove this matter strictly. It follows that the said Notice to Quit had not been served on Sudagar as pleaded and that therefore Sudagar's contractual tenancy had not been terminated as pleaded.

In paragraph 6 of the Statement of Claim the plaintiffs pleaded that "in or about the year 1978 the plaintiffs came to know that the said Sudagar

Singh had died on a date unknown to the plaintiffs in India" and in paragraph 7 of the Statement of Claim go on to say that "on September 24, 1981 the plaintiffs served on the Honourable Chief Justice of Singapore as legal personal representative of the Estate of Sudagar Singh a Notice to Quit dated September 24, 1981 and expiring on October 31, 1981."

What has primarily to be decided on this plea is whether the plaintiffs had proven the death of Sudagar. On this issue there was no admissible evidence before the trial judge and so it must be that the Notice to Quit served on the Chief Justice is of no effect. And yet again, in the circumstances of this case, at the time of the alleged service of the said Notice to Quit and at the time of the service of the Notice to Quit on the Chief Justice, Sudagar had a clear and unmistakable interest in the said premises and so had to be before the Court before any order adversely affecting him and his interest could be made.

The defendant in his Defence pleads that "the said Sudagar Singh has been a tenant in continuous occupation of the said premises since the year 1942 well before the plaintiffs became the owners and landlords thereof" and "had prior to January 1949 assigned the ground floor and part of the first floor thereof to various successive persons for the purpose of carrying on the business of a barber shop".

The plaintiffs accept the fact that Sudagar has had the tenancy of the premises since 1949 (page 29 of the Record). With regard to the plea by the defendant of successive assignments prior to January 1952 when the plaintiffs purchased the said premises the following documentary evidence in the instant case bears out the plea:

(1) the Assignment dated June 25, 1949 between P. Krishnasamy of the one part and V. Vethyan of the other part (pages 62 and 63 of the Record);

(2) the Assignment dated July 21, 1954 between the said V. Vethyan (therein spelt Vedhayan) of the one part and R. Govindarasu of the other part (pages 67 and 68 of the Record); and

(3) the Assignment dated June 9, 1955 between the said R. Govindarasu of the one part and P. Kothandapani and S. Subramanian of the other (pages 69 and 70 of the Record).

There is the further oral evidence of the defendant himself to the effect that on June 9, 1955 he had bought over the business including goodwill, tenancy, fixtures and furniture.

Lastly I would go on to say that if the said Agreement and the said Notice to Quit had been determined in favour of the plaintiffs and that even if there had been violations of the prohibition to sublet or assign I would still have found against the plaintiffs for it seems clear to me from the evidence that they had been aware of such violations for a long time before they took action.

For all these reasons the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *L.A.J. Smith; Murphy & Dunbar.*

PARKWAY PROPERTIES PTE. LTD. v. PAGE ONE – THE BOOK SHOP PTE. LTD. & 156 ORS.

[O.C.J. (Abdul Wahab Ghows J.) May 21 & June 7, 1985]

[Singapore – Suit No. 3900 of 1985]

Landlord and Tenant – Tenancy agreement – Covenant requiring tenants to keep premises open for business from 10 a.m. to 10 p.m. daily – Breach of covenant by tenants – Interim injunction restraining tenants – Whether enforceable.

Practice and Procedure – Interim injunction – Whether plaintiff/appellant would suffer irreparable damage if injunction not continued – Application of test in American Cyanamid case.

By agreements in writing made on various dates between the appellants and each of the respondents, the appellants leased to the respondents various portions of the premises in the building known as Parkway Parade. By clause 3.20 of the said agreements the respondents had agreed *inter alia* to keep their respective premises open for business from 10 a.m. to 10 p.m. daily or during such hours as the appellants shall from time to time prescribe as the usual business hours of the building. In breach of the aforesaid clause the respondents on or about March 14, 1985 closed their respective premises in consequence of which the appellants claimed that they had suffered loss and damage.

The appellants sought an injunction to restrain the respondents from repeating or doing any act which would directly or indirectly cause a breach of clause 3.20 of the various tenancy agreements made between the appellants and the respondents. On an *ex parte* application of the